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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,928	08/29/2002	Roger J. Gregoire	03006.0003.NPUS00	2352

28694 7590 06/23/2004

TRACY W. DRUCE, ESQ.  
1496 EVANS FARM DR  
MCLEAN, VA 22101

EXAMINER

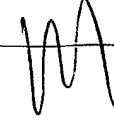
BASTIANELLI, JOHN

ART UNIT PAPER NUMBER

3754

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/064,928	Applicant(s) GREGOIRE, ROGER J. 	
	Examiner John Bastianelli	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/24/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9, and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kolenc US 5,335,691.

Kolenc discloses a diaphragm and seat assembly having one or more diaphragms 40, a diaphragm cap 26, a diaphragm plate 42, a removable valve seat 50, the diaphragm cap and the diaphragm plate are fixedly joined with the diaphragms between, being a singular assembly. A valve body 16 with an inlet, outlet and an internal chamber receives the assembly. A valve actuator 12 with a valve stem 78 engageable with the valve body. The diaphragm plate has a toroid 42b for creating an atmospheric seal.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 10 and 18-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kolenc US 5,335,691 in view of Bass US 4,171,792.

Kolenc discloses the diaphragm plate having the toroid 42b for engaging with a groove 18 in the valve body to create an atmospheric seal. Kolenc's groove does not go into the valve body.

Bass discloses a groove (left of tongue 52) that goes into the valve body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the groove of Kolenc go into the valve body as disclosed by Bass in order to have a better seal between the parts. Kolenc lacks the toroid and groove being reversed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the toroid and groove, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 104 USPQ 104 (CCPA 1955).

#### ***Response to Arguments***

5. Applicant's arguments filed May 24, 2004 have been fully considered but they are not persuasive. The examiner would like to point out that claims 1-20 are apparatus claims, therefore the structure is what is given patentable weight. The examiner makes note of this because the applicant uses the process of the bonnet member and nut as an argument, which does not have anything to do with applicant's claim language or the examiner's rejection.

6. Applicant argues that Kolenc's diaphragm cap and diaphragm plate are not fixedly joined together. Kolenc's diaphragm cap and diaphragm plate are clearly fixedly joined together with a diaphragm between which is a singular assembly. This is clearly shown in the figures as they are

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“fixedly joined together”. If the cap and plate were not “fixedly joined together” the cap and plate would fall apart. It is seen as a singular assembly as it can be removed in one piece.

Applicant’s argument of a bonnet member and nut have nothing to do with applicant’s claim 1 as the applicant does not claim this.

7. Applicant argues that Kolenc does not disclose a singular diaphragm assembly.

Applicant appears to be reading a lot more into the claims than what is actually claimed. All that is claimed is “a singular diaphragm assembly”. This is clearly taught by Kolenc. Applicant’s argument of a bonnet member and nut have nothing to do with applicant’s claims 11.

8. Applicant makes remarks about the 103 rejections, but does not give any argument specifically regarding the language in the claims. The examiner stands by the 103 rejections of claims 10 and 18-20 as proper motivation was given in those rejections.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Bastianelli whose telephone number is (703) 305-0058. The examiner can normally be reached on M-F (9:00-6:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John Bastianelli  
Primary Examiner  
Art Unit 3754



JB

June 16, 2004